

STATE OF MICHIGAN
COURT OF APPEALS

GOYETTE MECHANICAL COMPANY, INC., as
assignee of GARY STEPHAN, d/b/a RAINBOW
SHELL,

UNPUBLISHED
January 14, 2003

Plaintiff/Counterdefendant-
Appellant,

v

SUPERIOR ENVIRONMENTAL
CORPORATION, INC.,

No. 221244
Genesee Circuit Court
LC No. 97-055216-CZ

Defendant/Counterplaintiff-
Appellee.

ON REHEARING

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

On November 19, 2002, we entered an opinion on remand, affirming in part and reversing in part the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7) [claims barred by statute of limitations]. *Goyette Mechanical Company, Inc v Superior Environmental Corp (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued November 19, 2002 (Docket No. 221244). Specifically, we affirmed the trial court in part, holding that plaintiff's claims in Counts II and III alleging professional negligence and violations of the Michigan Underground Storage Tank Financial Assurance Act ("MUSTFA"), MCL 324.21501 *et seq.*, were barred by the two-year statute of limitations found at MCL 600.5805(4). However, because defendant did not argue that the statute of limitations barred Count I of plaintiff's complaint, we reversed the trial court's order granting summary disposition to defendant with respect to Count I. Pursuant to MCR 7.215(H), plaintiff now moves for rehearing of our opinion on remand, arguing that its claims in Counts II and III were timely because the applicable limitations period is the three-year period found at MCL 600.5805(8). Because plaintiff has demonstrated "palpable error" under MCR 2.119(F)(3), we now reverse in part our prior opinion on remand and hold that the trial court erred in granting defendant's motion for summary disposition under MCR 2.116(C)(7) [claims barred by statute of limitations] with respect to Counts II and III. Accordingly, we reverse the trial court's order granting defendant's motion for summary disposition and remand this case to the court for further proceedings.

In our prior opinion on remand, we held that Counts II and III of plaintiff's complaint were barred by the two-year malpractice statute of limitations period found at MCL 600.5805(4). In *Local 1064 v Ernst & Young*, 449 Mich 322; 535 NW2d 187 (1995), the Michigan Supreme Court held that the two-year period found at MCL 600.5805(4) applied if the profession was subject to common-law malpractice liability before 1961, as malpractice was not defined by the Revised Judicature Act. In *Local 1064*, which involved a claim of accounting malpractice, the Court found that the two-year period applied because "accounting is a profession traditionally subject to common-law malpractice liability." *Id.* at 333. Nevertheless, the Court in *Local 1064* declined "to decide whether the malpractice statute of limitations applies to actions against members of *all* state licensed professions." *Id.*

In this case, plaintiff argues that the three-year period specified in MCL 600.5805(8) provides the applicable limitations period to its claims in Counts II and III because environmental consultants, though members of a state-licensed profession, were not subject to common-law malpractice liability prior to 1961. As plaintiff points out, professional negligence claims under MUSTFA arose in 1994 when it was enacted. Because we find that plaintiff's claims in Count II and III were not subject to common-law malpractice liability before 1961, we must conclude that the two-year malpractice statute of limitations in MCL 600.5805(4) is not applicable. Rather, plaintiff's claims in Count II and III are subject to the three-year provision in MCL 600.5805(8). *Id.* at 329-333; see also *Nat'l Sand, Inc v Nagel Construction, Inc*, 182 Mich App 327; 451 NW2d 618 (1990). Because plaintiff filed its suit on March 14, 1997, these claims are timely.

Accordingly, we reverse in part our prior opinion on remand, which affirmed the trial court's dismissal of Counts II and III of plaintiff's complaint. Thus, we hold that the trial court erred in granting summary disposition to defendant with regard to all three counts of plaintiff's complaints and remand this case to the trial court for further proceedings. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Kathleen Jansen

McDonald, J. did not participate.